

MICHELE BEAL BAGNERIS, City Attorney
State Bar No. 115423
mbagneris@cityofpasadena.net
ARNOLD F. LEE Assistant City Attorney
State Bar No. 278610
aflee@cityofpasadena.net
100 N. Garfield Avenue, Suite N210
Pasadena, CA 91101
Telephone: (626) 744-4141
Facsimile: (626) 744-4190

Attorneys for Defendant City of Pasadena

W. Keith Wyatt, Esq.
State Bar No. 80859
wkwyatt@imwlaw.com
IVIE McNEILL WYATT PURCELL & DIGGS
444 S. Flower Street, 18th Floor
Los Angeles, CA 90071
Phone: (213) 489 0028
Fax: (213) 489 0552

Attorneys for Defendant METRO TRANSIT

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

GABRIELA CABRERA,

Plaintiff,

vs.

CITY OF PASADENA, METRO
TRANSIT AND DOES 1-10,
INCLUSIVE,

Defendants.

) Case No.: 2:23-cv-00340

)
) [State Superior Court Case No.
) 22AHCV01210, Los Angeles Superior
) Court, Northeast District]

) **NOTICE OF REMOVAL OF**
) **ACTION UNDER 28 U.S.C. §§**
) **1441(a) and 1446(a);**
) **DECLARATION OF ARNOLD F.**
) **LEE; SUPPORTING EXHIBITS;**
) **DEMAND FOR JURY TRIAL**

) **[28 U.S.C. §§ 1446, 1447; Rule 11]**

1 TO THE HONORABLE COURT, ALL PARTIES, AND TO THEIR
2 ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that Defendants City of Pasadena and Metro
4 Transit (hereinafter collectively referred to as “Defendants”) hereby remove to this
5 Court the state court action *Gabriela Cabrera v. City of Pasadena, et al.*, Los
6 Angeles Superior Court Case Number 22AHCv01210, under 28 U.S.C. sections
7 1441, 1443 and 1446 based on the following:

8 1. On or about December 2, 2022, this action was filed in Los Angeles
9 Superior Court by Plaintiff Gabriela Cabrera (“Plaintiff”) against various
10 defendants.

11 2. On December 15, 2022, Defendant City of Pasadena was served with
12 the Complaint. On December 28, 2022, Defendant Metro Transit was served with
13 the Complaint.

14 3. The Complaint alleges federal claims under 42 U.S.C. section 12131,
15 et seq. (First Cause of Action) and 29 U.S.C. section 794, et seq. (Second Cause of
16 Action). Attached hereto as Exhibit “A” is true and correct copy of the Complaint.

17 4. This action meets the original jurisdiction requirements of 28 U.S.C.
18 section 1441(a) and is removable by Defendants under 28 U.S.C. section 1446(a).
19 A case is removable from state to federal court if the action could have been
20 originally commenced in federal court. 28 U.S.C. section 1441(a); *Grubbs v.*
21 *General Electric Credit Corp.*, 405 US 699, 702 (1972). The propriety of removal
22 is determined at the time the petition for removal is filed by reference to the
23 plaintiff’s complaint filed in state court. *La Chemise Lacoste v. Alligator Co.*, 506
24 F.2d 339, 343-44 (3d Cir. 1974). When the complaint states a claim invoking the
25 original jurisdiction of the federal court, the action is removable. *Id.* Federal
26 district courts have original jurisdiction in the district courts over all actions
27 brought under the Americans with Disabilities Act of 1990 and Section 504 of the
28 Rehabilitation Act of 1973, such as this. *People ex rel. Lockyer v. County of Santa*

1 *Cruz*, 416 F.Supp.2d 797, 799 (N.D. Cal. February 21, 2006) (“The complaint
2 contains a cause of action for violation of a federal statute, the ADA. This court
3 would thus have had original jurisdiction over that cause of action, see 28 U.S.C. §
4 1331, and supplemental jurisdiction over the other cause of action in the complaint
5”); *Walker v. Newsom*, 2022 WL 1190458, at *1 (E.D. Cal. April 21, 2022)
6 (recognizing proper removal of case alleging Section 504 of the Rehabilitation Act
7 of 1973 claim). *See* 28 U.S.C. sections 1343(a)(3) and 1443. Moreover, the
8 Federal Code confers original jurisdiction in the district courts over all actions
9 involving federal questions. *See* 28 USC section 1331.

10 5. The gravamen of this action is the claims brought under the
11 Americans with Disabilities Act of 1990 set forth in paragraphs 33 through 41
12 (Claim One) and Section 504 of the Rehabilitation Act of 1973 set forth in
13 paragraphs 42 through 47 of Plaintiff’s Complaint. Plaintiff’s claims therefore
14 arise under federal law in that they “require[] resolution of a substantial question of
15 federal law in dispute between the parties.” *Franchise Tax Bd. v. Laborers*
16 *Vacation Trust*, 463 U.S. 1, 13 (1983). Plaintiff’s “right to relief. . . necessarily
17 depend[s] on the resolution of a substantial question of federal law ... in that
18 federal law is a necessary element of one of the well pleaded ... claims.”
19 *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 808 (1988) (citation
20 omitted).

21 6. One State law claim is also asserted in Plaintiff’s Complaint (third
22 cause of action). When an action originally filed in state court is removed to
23 federal court, the federal court has jurisdiction to determine not only the federal
24 claims but all pendent state claims “that are so related to claims in the action ... that
25 they form part of the same case or controversy” *See* 28 U.S.C. section 1367.
26 Such is the case with all the pendent state claims in this matter.

27 7. All Defendants that have been served have consented in this Notice of
28 Removal.

DEMAND FOR JURY TRIAL

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that the Defendants City of Pasadena and Metro Transit request a trial by jury under Federal Rules of Civil Procedure, Rule 38(b) and Local Rule 38-1.

DATED: January 17, 2023

MICHELE BEAL BAGNERIS

City Attorney

ARNOLD F. LEE

Assistant City Attorney

By: /s/ Arnold F. Lee

ARNOLD F. LEE²

Assistant City Attorney

Attorneys for Defendant,

City of Pasadena

DATED: January 17, 2023

IVIE McNEILL WYATT PURCELL &
DIGGS

By: /s/ W. Keith Wyatt

W. KEITH WYATT

Attorneys for Defendant,

METRO TRANSIT

² I, Arnold F. Lee, attest that w. Keith Wyatt concurs in the content of this Demand for Jury Trial and has authorized its filing.

DECLARATION OF ARNOLD F. LEE

I, ARNOLD F. LEE, declare as follows:

1. The facts set forth herein are based on my personal knowledge or, as specified, upon my information and belief, based on official acts and writings. If called upon as a witness, I could and would testify competently to the facts contained herein under oath.

2. I am an attorney at law, duly licensed to practice before this Court and all of the courts of the State of California, and an Assistant City Attorney for the City of Pasadena, attorneys of record for Defendant City of Pasadena in this civil action filed in the Superior Court of the State of California, County of Los Angeles entitled *Gabriela Cabrera v. City of Pasadena, et al.*, Superior Court Case No. 22AHCv01210, now pending in the Los Angeles Superior Court.

3. On December 15, 2022, Defendant City of Pasadena was served with the Complaint. The Complaint alleges federal claims under 42 U.S.C. section 12131, et seq. (First Cause of Action) and 29 U.S.C. section 794, et seq. (Second Cause of Action). Attached hereto as Exhibit "A" is true and correct copy of the Complaint.

4. True and correct copies of all other process, pleadings and orders served upon the Defendants in the action filed in Los Angeles Superior Court are attached hereto collectively as Exhibit "B".

5. I am informed and believe that on December 28, 2022, Defendant Metro Transit was served with the Complaint.

6. Other than those persons identified above and the persons identified in the Complaint's caption as "DOES 1 – 10" there are no other named defendants in this lawsuit. Therefore, there are no other defendants who need to consent in order for this case to be removed.

7. This Notice of Removal is filed with this Court within 30 days of the later served Defendant (Metro Transit), on December 28, 2022. 28 U.S.C. section

1 1446(b)(2)(C).

2 8. A copy of this Notice of Removal will be filed with the Clerk of the
3 Los Angeles Superior Court, Central District, and a copy of this Notice is being
4 served on Plaintiff's counsel.

5 I declare under penalty of perjury pursuant to the laws of the United States
6 of America that the foregoing is true and correct.

7 Executed on January 17, 2023 at Pasadena, California.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

/s/ Arnold F. Lee
ARNOLD F. LEE

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I do hereby declare and state that I am employed in the County of Los Angeles, I am over the age of eighteen years and not a party to the within entitled action. My business address is 100 North Garfield Avenue, Suite N210, Pasadena, California 91101.

On January 17, 2023, I served the foregoing document described as:

NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. §§ 1441(a) and 1446(a); DECLARATION OF ARNOLD F. LEE; SUPPORTING EXHIBITS; DEMAND FOR JURY TRIAL

on the interested parties by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST.

[X] BY MAIL:As follows: I am "readily familiar" with the City's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Pasadena, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit. I deposited such envelope in the mail at Pasadena, California. The envelope was mailed with postage fully prepaid.

[X] BY EMAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[X] (Federal) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

EXECUTED on January 17, 2023, at Pasadena, California.

/s/ Leonela Murillo

Leonela Murillo

SERVICE LIST

Dayton Magallanes, Esq.
LAW OFFICES OF DAYTON
MAGALLANES
15786 Sophomore Ct
Moorpark, CA 93021
Telephone: 310-779-2348
Email: DaytonMagallanes@Yahoo.com

Attorney for Plaintiff,
GABRIELA CABRERA

W. Keith Wyatt, Esq.
IVIE McNEILL WYATT PURCELL &
DIGGS
444 S. Flower Street, 18th Floor
Los Angeles, CA 90071
Phone: (213) 489-0028
Email: wkwyatt@imwlaw.com

Attorneys for Defendant METRO
TRANSIT